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Lilly Corporate Center
Indianapolis, Indiana 46285
U.S.A.

Phone 317 276 2000

April 9, 2008

SUBMITTED VIA ELECTRONIC MAIL

Pat Troth
Rules Section Chief
Office of Air Quality
Indiana Department of Environmental Management
100 N. Senate Ave.
Indianapolis, IN 46204-2251

RE: Comments of Eli Lilly and Company on Air 033 NPD - Air Permit Applications: Notices of Deficiency and Placing Applications on Hold

Eli Lilly and Company ["Lilly"], appreciates the opportunity to comment on the proposed non-rule policy document addressing the process for issuing Notices of Deficiency and holding permit applications. Lilly supports the idea of clarifying the permitting process for permit applicants in order to assure timely permit reviews for all applicants.

Although we offer our general support for Air 033 NPD, Lilly offers the following comments to improve how the policy works and to provide IDEM and permit applicants with some flexibility. In addition, it appears that some aspects of the policy are inconsistent with 326 IAC 2-1.1-8, the Indiana Rules which establish the air permitting review time periods.

Consistency with 326 IAC 2-1-8

First and foremost, the NPD should be written consistently with the existing air permit review accountability requirements in statutes and in 326 IAC 2-1-8. As written, the draft NPD does not appear to use the structure provided by 326 IAC 2-1.1-8 as its basis, and it is somewhat confusing to without the context of the existing rules. Lilly recommends that IDEM re-write the NPD so that the existing rules and the gap-filling provisions of the NPD are meshed so that the reader of the document can understand what the rules provide, and what things IDEM is adding through the NPD.

For example, 326 IAC 2-1.1-8(i) requires IDEM, within 30 or 45 days of receiving an application (based on the type of permit), to notify the applicant of the progress on a permit application or to request additional information. Item 6.1 of the proposed NPD does not, however, specify the time frame in which the permit reviewer will issue a notice of deficiency. Ideally the NPD would follow the structure of 326 IAC 2-1.1-8, and only add new procedures or requirements where the rules do not provide direction.

Including important elements of the rule in the NPD will also ensure that the NPD is completely consistent with the rules. Lilly has an example of where the proposed NPD may not be consistent with 326 IAC 2-1.1-8.

The proposed NPD would allow IDEM to deny a permit application after 30 days if the applicant failed to respond to a request for additional information issued by the permit reviewer. This stands in contrast to 326 IAC 2-1.1-8(j)(1), which allows IDEM to deny a permit application only after 60 days from the date of receipt of the notice of deficiency have passed. Although 326 IAC 2-1.1-8(a) establishes time frames for IDEM to issue construction permits, other provisions in 326 IAC 2-1.1-8, such as 326 IAC 2-1.1-8(j) appear to apply to all permitting actions. Lilly believes that due to this provision in the rules, IDEM cannot deny a permit application based on insufficient information at any time prior to 60 days from the date the applicant receives the NOD.

Permit applications on "hold"

Lilly strongly opposes the proposal in item 6.9 that a permit application can be placed in "hold" status once, and for no more than 30 days. No one, whether it is a permit applicant or IDEM, wants to put applications on hold. Nonetheless, there are many circumstances when it is reasonable and appropriate to put an application on hold more than once or for a period of more than 30 days. Lilly recommends the NPD be revised to give IDEM more discretion about the number of times an application can be put on hold and how long an application can be put on hold.

Although we understand that putting applications on hold can cause inefficiencies in IDEM's permit review process, this policy basis should not supersede the permit applicant's need to receive a permit that is both technically and legally correct. Often the reason for placing an application on hold is to address a technical or regulatory issue.

For example, an application may be put on hold [stopping the permit accountability clock to benefit IDEM] while a regulatory interpretation is being resolved. If that issue involves USEPA Region V or even USEPA headquarters, it can easily take more than 30 days to resolve. Should a permit application be denied, and an applicant be forced to re-apply because it takes longer than 30 days to resolve a regulatory issue?

Because construction permits are often filed before the exact scope of a project is defined, it is not unusual that an application will need to be put on hold to address project changes. Applications should not be denied simply because it may take longer than 30 days to address project changes.

If you have questions, please contact me at 317-276-0331 or by e-mail at bpaul@lilly.com.

Sincerely,

A handwritten signature in black ink that reads "B. Paul". The letters are cursive and slightly slanted to the right.

Bernard Paul



A NiSource Company

801 E. 86th Avenue
Merrillville, IN 46410

April 9, 2008

Mr. Doug Wagner
Air Permits Branch
Office of Air Quality
Indiana Dept. of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204



RE: Comments on Non-rule Policy Document for Notices of Deficiency and Placing Applications on Hold (Air 033 NPD)

Dear Mr. Wagner:

NiSource thanks you for the opportunity to comment on the above referenced Non-rule Policy Document. NiSource subsidiaries across Indiana subject to permitting requirements would be impacted by the proposed Non-rule Policy Document.

We are encouraged by the IDEM's interest in providing efficient, timely review of air permit applications and subsequent permit issuance. We appreciate IDEM's efforts to improve this process. However, we have concerns about certain aspects of the above referenced NPD. Specifically, we note that the applicant's response period is limited to a specified number of calendar days without regard for non-business day periods such as weekends and holidays when personnel or contractors who would supply the requested information may not be available. We request that IDEM consider providing flexibility for the applicant's response during these periods and especially time associate with major holiday periods, such as the major holidays toward the end of the year.


Similarly, we recommend that the IDEM consider providing flexibility in the deadline regarding the denial of an application when the applicant is making a good faith effort to provide the requested information. The complexity of the information requested can vary on a project/application-specific basis and should be considered in the applicant's response period deadline. For example, in a major source NSR application, a major revision to the technology review, such as BACT or LAER analysis, or a revision of an atmospheric dispersion modeling analysis, could adversely affect the applicant's ability to meet the NPD deadlines. To the extent that the applicant's response is dependent upon information provided by the IDEM to the applicant, an extension of the applicant's response deadline should be provided the applicant commensurate with the time it may take the IDEM to provide that information to the applicant.

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These same considerations should carry over to the permits issued under 326 IAC 2-7 and 326 IAC 2-8.

If you have any questions about these comments, please do not hesitate to contact me at 219-647-5240.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Ross". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Ross".

John M. Ross
Manager, Regulatory Programs
EH&S
NiSource Corp. Services

Bingham ● McHale^{LLP}

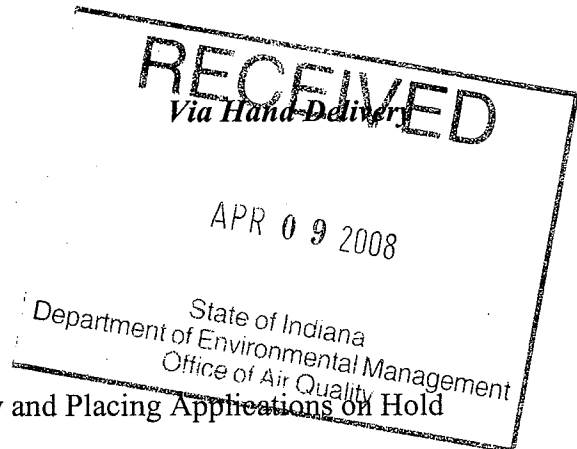
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April 9, 2008

Jennifer K. Thompson
Attorney
jthompson@binghammchale.com

Nonrule Policy Document No: Air-033
Pat Troth, Rules Section Chief
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Re: Air-033-NPD
Air Permit Applications: Notices of Deficiency and Placing Applications on Hold



Dear Ms. Troth:

In response to the Indiana Department of Environmental Management's ("IDEM's") Air-033-NPD ("NPD") comment period, the CASE Coalition respectfully submits the following comments to the proposed new non-rule policy document regarding Air Permit Applications: Notices of Deficiency and Placing Applications on Hold.

The CASE Coalition is an Indiana-based coalition of industrial and manufacturing companies, each with significant operations in Indiana. Our members produce such goods as steel, chemicals, pharmaceuticals, automobiles and parts.

The CASE Coalition recognizes IDEM's efforts to improve the efficiency of the Office of Air Quality's permitting process so that sources can obtain permits more quickly. However, IDEM must balance increased efficiency with existing legal requirements and maintain flexibility to work with a diverse group of sources.

In that accord, the CASE Coalition submits the following comments to Air-033-NPD.

1. **The format and structure of Air-033-NPD is confusing and differs from other existing NPDs.**

The format of Air-033-NPD is inconsistent with IDEM's other nonrule policy documents. First, the numbering is unnecessary and confusing and should be removed. This is especially true in the References Section. Second, it is not necessary to include the Roles Section of the NPD, as the policy is set forth in the Policy Section of the NPD. The Roles Section is more appropriate in an agency

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standard operating procedure document or permit writer checklist, and its inclusion only makes the NPD confusing, forcing the reader to confirm that the roles and policy text are consistent.

Moreover, the NPD should incorporate the citations included in the References Section into the text of the NPD. Other nonrule policy documents clearly identify which parts of the policy are pursuant to a rule or statute, and this assists in determining what is policy and what is law.

2. **Timeframe for responding to Notice of Deficiency is contrary to law, inflexible and nonsensical.**

Pursuant to IC § 13-15-4-9, the Commissioner of IDEM may deny a permit application because it is incomplete if IDEM identifies each part of the application that is incomplete not later than thirty-five (35) working days after receipt of the application and the applicant fails to submit or fails to make a good faith effort to submit the requested information not later than sixty (60) days after receipt of a written request from IDEM. The NPD contradicts the statute and mandates that a permit writer deny applications for Part 70 sources and FESOP sources that do not respond within thirty (30) days. (We recognize that the NPD attempts to split this time period into two thirty (30) day periods; however, this is not consistent with the statute and only creates additional tracking, review and correspondence for IDEM and the source to complete despite the NPD's goal of reducing the workload on IDEM in processing permits and reducing the time period for processing permits.)

Indiana's statutes and rules recognize that flexibility is appropriate in certain circumstances. Both the statute and numerous rules cited provide that IDEM "may deny" (not "shall deny") a permit application if information is not submitted within the specified time period. The NPD should also provide flexibility in this regard, otherwise it is too rigid because the timeframe may be too restrictive in some cases. In order for the NPD to be workable, there must be a provision which allows for more time to respond to a Notice of Deficiency ("NOD") if the application justifies the need. Even the existing rules recognize that permittees may be asked to conduct testing and sampling in such a request, which IDEM should recognize may take longer than the proposed thirty (30) day time period for Part 70 and FESOP sources, and even the sixty (60) day statutory time period. *See* 326 IAC 2-1.1-8(f).

Additionally, the NPD allows sources submitting minor source applications sixty (60) days to respond to a NOD and the more complicated major sources less time. Minor sources should not be given more time to respond to NODs than major sources.

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3. Notices of Deficiency are required to be mailed.

The NPD suggests through the definition of “Notice of Deficiency” in the Definition Section that NODs can be sent via email. However, 326 IAC 2-1.1-8(d)(2) states that IDEM’s application review time period can only be suspended after “the department mails a request for additional information to the applicant . . .” Additionally, IC § 13-15-4-9 states that the Commissioner may deny a permit after the applicant fails to respond within sixty (60) days of receiving a written request from IDEM. Moreover, IC § 4-21.5-3-1 requires service by United States mail or by personal service and the statute does not address service via email, thus how will IDEM ensure NODs sent via email are properly served. As such, the NPD should be amended to clarify that NODs shall be mailed to the source, unless IDEM has received agreement from the source that communicating via email is acceptable.

4. Policy regarding placing permits on hold is too rigid.

Pursuant to IC § 13-15-4-10 the time period for processing a permit is suspended if the applicant requests that the Commissioner defer processing of the application in writing. The statute does not limit the amount of time a permit application can be placed on hold. Therefore, it is logical to conclude that a reasonable length of time will be allowed given the specific issues which must be resolved or additional information that must be provided.

As written, the proposed policy only allows for permits to be placed on hold for thirty (30) days irregardless of the facts surrounding the request. Therefore, the thirty (30) day limit is arbitrary and the NPD should instead be written to include a flexible timeframe, recognizing that there may be certain situations which mandate placing a permit on hold for more than thirty (30) days.

5. The NPD does not discuss how IDEM is going to address permit applications that are currently on hold.

Both IDEM and applicants have requested that permits be placed on hold. The NPD is silent on how IDEM is going to deal with these permits if a new policy is implemented. Consistent with the NPD, in situations where IDEM has requested that permit applications be placed on hold, the permits should be taken off hold and placed back into processing. In situations where the permittee has requested an application to be placed on hold, IDEM will have to evaluate each request in accordance with the policy adopted.

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The CASE Coalition appreciates IDEM's efforts to process permits more effectively and efficiently; however, because the NPD provides no flexibility to deal with site-specific situations it is impractical in its current form. The NPD takes away IDEM's discretion to work with an applicant, and in certain circumstances, creates additional work for IDEM by requiring that a denial be issued. The CASE Coalition respectfully requests that IDEM make the above-referenced modifications to proposed Air-033-NPD consistent with the statutes and rules cited.

Please contact me at 686-5234 if you have any questions or need additional information.

Sincerely,

Jennifer Thompson

Jennifer K. Thompson
Counsel for the CASE Coalition

1286434



Nysa L. Hogue
Environmental Coordinator

317-261-5473

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APR 09 2008

State of Indiana
Department of Environmental Management
Office of Air Quality

April 8, 2008

Ms. Pat Troth
Office of Air Quality
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, IN 46204

RE: Nonrule Policy Document # Air 033 NPD

Dear Ms. Troth:

Indianapolis Power & Light Company (IPL) appreciates the opportunity to comment on the above nonrule policy document. IPL's comments are as follows:

1. 5.1(C)-(F): IPL requests that IDEM add the caveat that the Section Chief has the authority to allow an extension beyond the 30 calendar days as currently listed in the draft NRPD. The revisions are as follows:

C. For permit applications processed under 326 Indiana Administrative Code 2-7 and 2-8, if the applicant makes no response after 30 calendar days or refuses to make a response, deny the air permit application **unless otherwise determined by the Section Chief.**

D. For permit applications processed under 326 Indiana Administrative Code 2-7 and 2-8, if the applicant makes an incomplete response, send a reply to the applicant noting the missing information and giving the applicant an additional 30 calendar days to complete the response. If the applicant does not submit the missing information within that time, deny the air permit application **unless otherwise determined by the Section Chief.**

E. For permits processed under rules other than 326 Indiana Administrative Code 2-7 and 2-8, if the applicant does not send a response after 60 calendar days, deny the air permit application **unless otherwise determined by the Section Chief.**

F. For permit applications processed under rules other than 326 Indiana Administrative Code 2-7 and 2-8, if the applicant makes an incomplete response, send a reply to the applicant noting the missing information and giving the applicant an additional 30 calendar days to complete the response. If the applicant does not submit the missing information within that time, deny the air permit application **unless otherwise determined by the Section Chief.**

2. 5.2(B): IPL requests that the timeframe and frequency listed in this section be revised from 30 calendar days to a case by case determination due to situations that involve complex technical issues which may take additional time to resolve. At a minimum, IPL requests that an extension beyond the timeframe and frequency be allowed under the section chief discretion. The revision is as follows:

Indianapolis Power & Light Company

One Monument Circle Indianapolis, IN 46204-2901

www.IPLpower.com

April 8, 2008

B. Not put an air permit application on hold for more than 30 calendar days and not put an air permit application on hold more than once **unless otherwise approved by the Section Chief.**

3. 6.3-6.6: IPL requests that IDEM add the caveat that the Section Chief has the authority to allow an extension beyond the 30 calendar days as currently listed in the draft NRPD. The revisions are as follows:

6.3 For air permit applications processed under 326 Indiana Administrative Code 2-7 and 2-8, if the applicant does not send a response after 30 calendar days or refuses to make a response, the permit writer shall deny the air permit application **unless otherwise determined by the Section Chief.**

6.4 For permit applications processed under 326 Indiana Administrative Code 2-7 and 2-8, if the applicant makes an incomplete response, the permit writer will send a reply to the applicant noting the missing information and giving the applicant an additional 30 calendar days to complete the response. If the applicant does not submit the missing information within that time, the application will be denied **unless otherwise determined by the Section Chief.**

6.5 For air permit applications processed under rules other than 326 Indiana Administrative Code 2-7 and 2-8, if the applicant does not send a response after 60 calendar days or refuses to make a response, the permit writer shall deny the air permit application **unless otherwise determined by the Section Chief.**

6.6 For permit applications processed under rules other than 326 Indiana Administrative Code 2-7 and 2-8, if the applicant makes an incomplete response, the permit writer will send a reply to the applicant noting the missing information and giving the applicant an additional 30 calendar days to complete the response. If the applicant does not submit the missing information within that time, the application will be denied **unless otherwise determined by the Section Chief.**

4. 6.9: IPL requests that the timeframe and frequency listed in this section be revised from 30 calendar days to a case by case determination due to situations that involve complex technical issues which may take additional time to resolve. At a minimum, IPL requests that an extension beyond the timeframe and frequency be allowed under the section chief discretion. The revision is as follows:

Air permit applications will not be put on hold more than once and will not be put on hold for more than 30 days **unless otherwise approved by the Section Chief.**

If you have any questions on the above comments, please do not hesitate to contact me at 317-261-5473.

Sincerely,


Nysa Hogue

Senior Environmental Coordinator – IPL Corporate Affairs
One Monument Circle
Indianapolis, IN 46204

317-261-5473

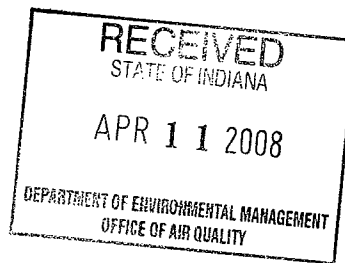
NLH

Hatchett & Hauck LLP

James M. Hauck

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April 9, 2008

Via U.S. and Electronic Mail

Nonrule Policy Document #: AIR-033
Pat Troth, Rules Section Chief
Office of Air Quality
Indiana Department of Environmental Management
100 N. Senate Ave
Indianapolis, Indiana 46204

Re: Comments on Nonrule Policy Document #Air-033 –
Air Permit Applications: Notices of Deficiency and
Placing Applications on Hold

Dear Ms. Troth:

Please find attached Steel Dynamics, Inc.'s comments on IDEM's draft agency nonrule policy document Air-033, Air Permit Applications: Notices of Deficiency and Placing Applications on Hold. We appreciate IDEM providing a public comment period for this policy document. If you have any questions or would like to discuss these comments, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Hauck".

James M. Hauck

JMH:jks
Enclosure

CC: Doug Wagner, OAQ Permits Branch
Matt Stuckey, Permits Branch Chief
Dan Murray, Assistant Commissioner, OAQ

Comments on Draft Agency Nonrule Policy Document Air 033 NPD – “Air Permit Applications: Notices of Deficiency and Placing Applications on Hold”

April 9, 2008

The following comments are submitted on behalf of Steel Dynamics, Inc. (“SDI”), an Indiana corporation with nine permitted facilities located throughout the State. In addition to this comment document, SDI is also submitting the proposed draft nonrule policy document it had previously submitted to IDEM to address several issues related to the “permit clock” and processing of applications (“SDI Draft”). SDI thanks IDEM for providing a public comment period and welcomes any questions the agency may have.

SDI appreciates IDEM’s commitment to issuing permits to Indiana sources in a timely manner. Timely issuance of accurate permits ensures the successful creation, growth, and competitiveness of Indiana businesses in a global economy. In addition, when the agency consistently reviews permit applications within the framework provided by Indiana’s air permitting rules and statutes, it creates an atmosphere of stability that allows Indiana companies to successfully plan for the future. While making it easier to do business in Indiana, having an organized and consistent manner for dealing with the large amounts of information required in permit applications also better serves the environment by ensuring proper consideration of all aspects of a project.

Any nonrule policy document that addresses how permit applications are processed by the agency should be developed with these goals in mind. We certainly understand and agree that important components of an efficient permitting system are submittal of complete and accurate permit applications and a process for efficiently identifying and addressing incomplete and/or inaccurate submittals, through notices of deficiency or otherwise. However, any such process should be first and foremost designed to provide flexibility to the Indiana businesses in need of permits. It would be unfortunate if, in an effort to improve efficiency in permitting for the benefit of the regulated entities, projects that are good for business and appropriate environmentally were to be excluded from the process only because, for instance, it took several rounds of clock stops and discussions to determine all appropriate information needed for permitting.

SDI believes that the Indiana air rules at 326 IAC 2-1.1-8 address these goals by setting out a detailed framework in which the permit application review process is supposed to take place. These rules provide the review timeframes allotted to IDEM for each type of permit application, the means by which the agency may start and stop the day count within this timeframe, an application completeness review period, the means by which the agency may request additional information and the means by which a company should provide it, a means by which IDEM should assess its permit day count against the calendar day count and inform a source of its determination, and a means for refund of permit fees if necessary. In contrast, IDEM’s draft Nonrule Policy Document Air 033 NPD – “Air Permit Applications: Notices of Deficiency and Placing Applications on Hold” (“Draft Policy”), addresses only a very small portion of this framework – Notices of Deficiency (“NOD”) – without considering all of the other parts and how they relate to the issuance of NODs. By way of example, Indiana’s air rule at 326 IAC 2-1.1-8 – Time Periods for Determination on Permit Applications prescribes how an NOD must be issued so that IDEM can stop the clock, and also on what day the clock is to be stopped. Within

this framework, there are policy decisions to be made; for example, the applicable rules do not address the use of email to transmit information. To be useful to both the agency and Indiana businesses, any policy addressing the issuance of NODs and placing applications on hold should also address all of the interrelated rules and questions raised by those rules.

The following comments address each section of the Draft Policy. Throughout, we will refer to the attached SDI Draft where it addresses a particular issue.

1.0 PURPOSE

SDI's Comment: The Purpose of the Draft Policy Should Be Expanded

As explained above, one of IDEM's goals is the timely issuance of permits. This section should expressly state that the purpose of the Draft Policy is to clarify how, under the permit clock rules of 326 IAC 2-1.1-8, IDEM will process applications and request additional information from sources. A clear and inclusive Purpose statement will help all involved parties recognize when this Draft Policy should be consulted during the permitting process. Please refer to Section 1.0 of the SDI Draft for an example of how the Purpose section should clearly describe all of the goals this Draft Policy should meet.

2.0 SCOPE

SDI's Comment: The Scope of the Draft Policy Should Be Expanded

As currently written, this section of the Draft Policy provides little meaningful guidance to IDEM's permit writers regarding the issues that the Draft Policy is supposed to address. An inclusive Scope section will help permit writers recognize the situations to be addressed by the Draft Policy and should also highlight any areas where special attention should be paid. Please refer to Section 2.0 of the SDI Draft for an example of how the Scope section should clearly describe the applicability of this guidance document.

3.0 SUMMARY

SDI's Comment: The Draft Policy Summary Should Describe All Aspects of the Permit Application Process That Are Covered by the Draft Policy

Consistent with SDI's recommendations for the inclusion of permit clock issues in this Draft Policy, the Summary section should be adjusted accordingly.

Additionally, in the SDI Draft, we suggested a Background section in place of the Summary. Inclusive Purpose and Scope sections would provide an informative summary of the information contained in the Draft Policy, and SDI believes that there is a real value to be added to the Draft Policy by including a section that describes the context in which the Draft Policy was developed. Providing this context within the Draft Policy itself reinforces the overarching goals of the Draft

Policy, as described above, and keeps them in the foreground of any permitting action. Please refer to Section 3.0 of the SDI Draft as an example.

4.0 DEFINITIONS

SDI's Comment: Definitions Should be Added as Appropriate to Address Permit Day Count and Calendar Day Count Issues

Consistent with SDI's comments regarding broadening the scope of the Draft Policy to include permit clock stops and starts, the relevant definitions should be added to Section 4.0. Please refer to Section 4.0 of the SDI Draft for these suggested definitions.

5.0 ROLES

SDI's Comment: This Section Should Be Revised to be Consistent with the Relevant Rules at 326 IAC 2-1.1-8 and SDI's Comments

This section should define roles of IDEM staff consistent with SDI's comments on Section 6.0 of the Draft Policy, below.

6.0 POLICY

SDI's Comment: IDEM's Draft Policy Is Not Consistent with the Requirements of 326 IAC 2-1.1-8 – Time Periods for Determination on Permit Applications

SDI believes that 326 IAC 2-1.1-8 addresses the issuance of NODs and placing permits on hold more comprehensively and fairly than IDEM's Draft Policy. As explained above, the issuance of an NOD immediately raises the issue of when IDEM's permit clock (please see Section 4.0 of the SDI Draft for a definition of this term) should be stopped and started. Both sources and IDEM rely on the permit clock for an accurate accounting of the number of days it takes a permit application to be processed, and as a way to keep track of whether the clock is stopped while the source gathers requested information. 326 IAC 2-1.1-8 provides exactly when IDEM is allowed to stop the permit clock and when it must start the day count again. Specifically, 326 IAC 2-1.1-8 provides rules addressing the following topics relating to permit application processing and issuance of NODs:

- Initial stop and final start of the permit clock
- Timeline for notifying applicant of status of application and any deficiencies
- Two circumstances in which IDEM may suspend the permit clock
- How and when the clock is to be stopped for issuance of an NOD
- When an applicant's consent is needed to stop the permit clock
- Actions to be taken when time period under 326 IAC 2-1.18 (a) expires on the calendar clock

IDEM's Two-Strike NOD Policy Could Prohibit Growth of Indiana Business

Section 6.0 does not address the list of issues set out above, but affirmatively provides that an air permit application should not be put on hold more than once. IDEM's policy decision in Section 6.9 to allow permit applications to be put on hold only once and only for 30 days is not consistent with the rule, which does not limit the number of times an applicant may request that processing of a permit application be put on hold, and could result in increased costs to both Indiana businesses and IDEM. For example, 326 IAC 2-1.1-8(f) allows IDEM to request that the source conduct sampling/testing in order to provide information needed by IDEM for processing the application. The timeline for such testing or sampling could easily extend beyond the initial 30-day response time provided in Section 6.3 of the Draft Policy or even the additional 30 days provided under Section 6.4. At this point it appears that the Draft Policy would allow a source to request that the application be put on hold for an additional 30 days under Sections 6.7 and 6.9, but if the information requested by IDEM is not available by the end of that time period, the Draft Policy would require that the application be denied, forcing both the source and the agency to start the entire application process over again.

The rules at 326 IAC 2-1.1-8 are not so rigid, and, in some cases, a more fair and efficient result would be to maintain the current ability for a source to simply request the time needed to gather the required information. In an appropriate circumstance, it would be much more cost- and time-effective to allow another mutually-approved clock stop rather than force a restart of the application process or an appeal of IDEM's denial.

Also, requiring the section chief to review every single request by an applicant to stop the clock, as provided in Section 6.8, bottlenecks the permit process and is not efficient. This is just one example of the problems the Draft Policy would create; it is easy to imagine several variations, including ones where the actual stops and starts of the permit clock are at issue.

SDI appreciates IDEM's attention to timely issuance of permits, but cautions IDEM against using the current Draft Policy to achieve that goal when the current rules already provide a fair and consistent means for doing so. Section 5.0 of the SDI Draft, by using these rules as a guide, addresses several of the questions that the IDEM Draft Policy currently does not answer. SDI requests that IDEM carefully review Section 5.0 of the SDI Draft as well as 326 IAC 2-1.1-8 when considering the goals to be achieved by adoption of the current Draft Policy. In the few places where the SDI Draft makes policy choices – for example, when dealing with email transmissions – SDI feels that its choices are fair and consistent with the underlying rules and goals.

“SDI Draft”

Title: Permit Processing Day Count Guidance Under 326 IAC 2

1.0 PURPOSE

One of IDEM’s goals is the timely issuance of permits. This purpose of the IDEM ***Permit Processing Day Count Guidance Under 326 IAC 2*** (“Policy”) is to clarify when, under the “permit clock” rules of 326 IAC 2-1.1-8, IDEM will start and stop the permit day count clock in certain instances.

2.0 SCOPE

This Policy applies to IDEM’s processing of air permit applications subject to the requirements of 326 IAC 2-1.1-8. This Policy should be followed by permit writers when reviewing permit applications so that the clock is stopped and started only as allowed under the rules. To be consistent and fair to both applicants and the agency, special attention should be paid to what triggers the stop or start of the clock and how many times the clock may be stopped without requiring the written consent of the applicant.

3.0 BACKGROUND

The rules at 326 IAC 2-1.1-8(a) set time limits by which IDEM shall approve or deny issuance of permits under 326 IAC 2. If these time limits for permit review are exceeded, 326 IAC 2-1.1-8(m), (n), and (o) provide remedies for applicants, including the refund of permit fees. However, the rules also provide that the day count may be stopped in certain circumstances, and set out when the clock may be stopped, and when it must be started again. Therefore, it is important that IDEM establish a set of guidelines, based on the permit clock rules at 326 IAC 2-1.1-8, that clearly set out for both the agency and the public the circumstances in which the clock may be stopped and started. This will allow for consistent application of these rules in the review of air permit applications subject to the issuance time limits at 326 IAC 2-1.1-8(a).

4.0 DEFINITIONS

4.1 “Calendar Clock” The Calendar Clock is the actual day count (including weekends and holidays) on the calendar since the permit application was received by IDEM.

4.2 “Permit Clock” The Permit Clock is IDEM’s internal tracking system for the permit application processing period. Because IDEM may stop and restart the Permit Clock as provided in the applicable rules and guidance set out below, the day count according to the Permit Clock will not necessarily reflect the Calendar Clock day count.

5.0 POLICY

5.1 Permit Clock Day Count on the Air Quality Permit Status Search Website

IDEM posts the Permit Clock day count for each permit application on OAQ's "Air Quality Permit Status Search" website. In addition to a running day count, the reasons and dates for each stop or start of the Permit Clock are posted on this website.

5.2 Initial Start and Final Stop of the Permit Clock

The Permit Clock starts on the day that an application is received and stamped received by OAQ, or the date marked by OAQ on a certified mail return receipt accompanying an application, whichever is earlier, and ends on the date that the permit is issued or denied.

5.3 Timeline for Notification of Application Status or Potential Deficiencies

326 IAC 2-1.1-8(i) provides that OAQ shall **review the application materials** submitted and then shall **inform the applicant** of the status of the department's review or issue a request for additional information:

- (1) not later than **thirty (30) calendar days** after the day an application concerning an air pollution construction permit for a minor source or a minor modification was filed with the OAQ; or
- (2) not later than **forty-five (45) calendar days** after the day an application concerning an air pollution construction permit for a major source or major modification was filed with OAQ.

5.4 Allowable Suspension of Permit Clock

During the permit application processing period, the Permit Clock may be **suspended for either of two reasons:**

- (1) OAQ receives a **written request from an applicant** to suspend processing of the application so that an issue related to an application can be resolved or additional information concerning an application can be provided. This written request may be emailed, mailed, or hand-delivered, and must clearly request that processing of an application be suspended. It is acceptable for OAQ to solicit such a request in response to an inquiry that does not otherwise include it.
- (2) OAQ mails a **Notice of Deficiency ("NOD")** to the applicant describing the reasons the application is not complete after determining that one of the following apply:

- (a) an application does not contain all of the information or documents required by the rules that OAQ needs to process the application;
- (b) an application contains provisions that are not consistent with an applicable rule or law;
- (c) an applicant **fails to pay the required fee by no later than thirty (30) days after receipt of billing** or submits a check that is not covered with sufficient funds.

5.4.1 Start and Stop of Permit Clock for Notice of Deficiency

A written NOD must **be mailed** to the applicant (OAQ policy will be to send via certified mail), and the clock stops on the day that the **applicant receives** OAQ's written NOD in the mail. **Email will not suffice in this instance to stop the clock.**

The Permit Clock shall start again on the date OAQ receives, and stamps as received, the information requested, or the date marked on the certified mail return receipt that accompanied the information, whichever is earlier, **even if the applicant's response is determined to be inadequate.**¹ An email response shall be deemed received and stamped as received on the date listed by IDEM's email system as the date received.

In the interest of timely processing of applications, the permit writer may, in addition to mailing, also email the NOD to the applicant. In such instances, if the applicant's response is received and stamped as received by OAQ on or before the day the original mailed NOD is received by the applicant, the permit clock shall not stop.

¹ It should be noted that total failure to respond to an NOD may result in denial of the application. The rule provides that OAQ may deny a permit application as incomplete if the applicant:

- (1) fails to submit, within sixty (60) calendar days of receipt of an NOD, the requested information or a schedule for providing the requested information;
- (2) does not adhere to the schedule submitted under (1); or
- (3) fails to submit, within thirty (30) calendar days of receipt of a request for payment, a required fee or submits a check that is not covered with sufficient funds.

5.4.2 Only First Two NODs Will Stop the Permit Clock Without Written Agreement of Applicant

If the applicant's response does not provide all the information requested in an NOD, OAQ shall notify the applicant within forty-five (45) calendar days after receiving the response, as an additional NOD. The Permit Clock will stop automatically for the first two NODs. However, if OAQ finds an application to be incomplete after reviewing an applicant's response to a second or subsequent NOD, OAQ shall either:

(1) choose to issue a further NOD, but the Permit Clock cannot be stopped unless the applicant agrees **in writing** to defer processing of the application pending the applicant's response to the NOD; or

(2) deny the application as incomplete under 326 IAC 2-1.1-8(j). OAQ must give an applicant the opportunity to agree in writing to stop the Permit Clock and resolve the issues before making the decision to deny an application.

5.5 Expiration of Time Limit Provided by Law

Notwithstanding the Permit Clock, when the time period specified under 326 IAC 2-1.1-8(a) expires on the Calendar Clock, OAQ shall:

- 1) Provide the applicant with a written determination of whether the time period specified under 326 IAC 2-1.1-8(a) has expired on the Permit Clock. If OAQ believes that the time period has not expired on the Permit Clock, it must set out in the letter the relevant dates that allowed it to reach that conclusion, including the date the application was received, the dates of any and all permit clock stops and restarts, the reasons for stopping the clock, etc.
- 2) If the time period specified by 326 IAC 2-1.1-8(a) has expired on the Permit Clock, refund the applicant's application fee within thirty (30) calendar days of the expiration of the time period specified in 326 IAC 2-1.1-8(a). The application fee shall not be refunded if, within thirty (30) days of the expiration of the time period specified by 326 IAC 2-1.1-8(a), IDEM determines that one or more of the proposed emissions units is in operation without prior written authorization from the department, or that construction has commenced on one or more of the emissions units without prior written authorization from the department.
- 3) If the applicant is eligible for a refund of the application fee, OAQ shall, under 326 IAC 2-1.1-8(m), continue to review the application, approve or deny the application as soon as practicable, not bill the applicant for

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additional charges related to the application, and issue a schedule to the applicant for making a final determination on the pending application.

6.0 REFERENCES

6.1 326 IAC 2-1.1-8.

7.0 SIGNATURES